

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 381 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 agricultural inputs and agricultural outputs and to make an
- 4 appropriation.
- 5 Page 1, between the enacting clause and line 1, begin a new
- 6 paragraph and insert:
- 7 "SECTION 1. IC 15-9 IS ADDED TO THE INDIANA CODE AS
- 8 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE
- 9 JANUARY 1, 2003]:
- 10 **ARTICLE 9. LEGAL ASSISTANCE TO FARMERS**
- 11 **DEFENDING SUITS RELATED TO THE USE OF SEED OR**
- 12 **AGRICULTURAL CHEMICALS**
- 13 **Chapter 1. Definitions**
- 14 **Sec. 1. The definitions in this chapter apply throughout this**
- 15 **article.**
- 16 **Sec. 2. "Agricultural chemical" refers to a substance used in**
- 17 **agriculture for any of the following purposes:**
- 18 **(1) As a fertilizer.**
- 19 **(2) As a herbicide.**
- 20 **(3) As an insecticide.**
- 21 **Sec. 3. "Commission" refers to the Indiana commission for**
- 22 **agriculture and rural development established by IC 4-4-22-6.**
- 23 **Sec. 4. "Commissioner" refers to the lieutenant governor,**
- 24 **serving as the commissioner of agriculture under IC 4-4-3-2, or the**

lieutenant governor's designee.

Sec. 5. "Farmer" refers to a person engaged in commercial farming in Indiana.

Sec. 6. "Fund" refers to the farmer legal defense fund established by IC 15-9-5-1.

Sec. 7. "Legal expenses" refers to any of the following:

- (1) Attorney's fees.
- (2) Court costs.
- (3) Expert witness fees.
- (4) A farmer's travel expenses relating to litigation described in IC 15-9-4-1.

Sec. 8. "Registrant" refers to a person who registers under IC 15-9-2-2.

Sec. 9. "Seed" refers to agricultural seed or vegetable seed (as defined in IC 15-4-1-3) used to grow a commercial agricultural or a commercial vegetable crop.

Chapter 2. Registration of Persons Selling Agricultural Chemicals or Seed in Indiana

Sec. 1. This chapter does not apply to a person who sells agricultural chemicals or seed only at retail.

Sec. 2. A person who sells agricultural chemicals or seed in Indiana must register with the commissioner not later than the following:

- (1) February 1 of each year.
- (2) Ten (10) days before the person first sells agricultural chemicals or seed in Indiana.

Sec. 3. A person must do the following to register under this chapter.

- (1) Provide the information required by section 4 of this chapter.
- (2) Agree to comply with this article.
- (3) Pay a registration fee of one thousand dollars (\$1,000).
- (4) Pay the fees required by section 6 of this chapter.

Sec. 4. A person registering under this chapter must provide the following information in the form required by the commissioner:

- (1) The name of the registrant.
- (2) The business address of the registrant.
- (3) A description of the registrant's business structure.
- (4) A list of all the agricultural chemicals and seed that the registrant sold in Indiana during the previous calendar year.
- (5) For each agricultural chemical or seed listed under subdivision (4), the amount of chemical or seed sold in Indiana during the previous calendar year.
- (6) Any other information required by the commissioner.

Sec. 5. An individual authorized to act for the registrant must do the following:

- (1) State that the registrant agrees to comply with this article.

(2) Affirm the statement required by subdivision (1) and the information required by section 4 of this chapter under the penalties for perjury.

Sec. 6. (a) Except as provided in subsection (b) and IC 15-9-6-4, a registrant shall pay the following fees not later than ten (10) days after the date the registrant is required to register under section 2 of this chapter:

(1) For each fifty (50) pounds of seed the registrant sold in Indiana during the previous calendar year, five cents (\$0.05).

(2) For agricultural chemicals the registrant sold in Indiana during the previous calendar year, the following amounts:

(A) Ten cents (\$0.10) for each gallon of chemical if the chemical is a liquid designed to be applied without dilution.

(B) Ten cents (\$0.10) for each unit of chemical required to make one (1) gallon of liquid for application if the chemical is designed to be diluted before application.

(C) Ten cents (\$0.10) for each pound of chemical if the chemical is designed to be applied in a form other than a liquid.

(b) If a registrant did not sell agricultural chemicals or seed in Indiana during the previous calendar year, the registrant must pay a fee equal to one thousand dollars (\$1,000) multiplied by the number of months remaining in the current calendar year, including the month of the date of the registration.

Chapter 3. Registrant Requirements

Sec. 1. This chapter states requirements to which a registrant must agree to register under this article.

Sec. 2. A registrant is considered to agree to all other provisions of this article not stated in this chapter.

Sec. 3. (a) This section applies if a registrant sells seed or agricultural chemicals to a farmer, either directly or through another person, under a contract that the registrant requires the farmer to sign.

(b) The registrant agrees that if the registrant's contract contains a provision under which the farmer agrees to jurisdiction and venue of any named courts to adjudicate disputes arising under the contract or concerning any of the registrant's property rights in the seed or chemicals provided under the contract:

(1) the provision will be printed:

(A) using a font for the text of the provision easily distinguishable from the font used for other provisions of the contract;

(B) in a location in the contract that draws the farmer's attention to the provision;

(C) using any other technique designed to draw the farmer's attention to the provision; or

(D) using any combination of methods described in clauses

- 1 (A) through (C); and
- 2 (2) the registrant will require the farmer to sign the provision
- 3 in addition to any other signature required by the farmer to
- 4 enter into the contract.

5 **Chapter 4. Legal Assistance to Farmers Defending Suits Related**
 6 **to the Use of Seed or Agricultural Chemicals**

7 **Sec. 1. A farmer who is a defendant in a lawsuit that alleges that**
 8 **the farmer has:**

- 9 (1) **breached a contract:**
 - 10 (A) relating to seed or an agricultural chemical; and
 - 11 (B) to which the farmer is a party;
- 12 (2) **infringed a patent relating to seed or to an agricultural**
 13 **chemical; or**
- 14 (3) **violated an intellectual property right or other property**
 15 **right that another person has in seed or an agricultural**
 16 **chemical;**

17 **may apply to the commissioner for reimbursement of legal**
 18 **expenses incurred by the farmer in the lawsuit.**

19 **Sec. 2. (a) Except as provided in subsection (b) and section 3 of**
 20 **this chapter, the commissioner may reimburse not more than fifty**
 21 **percent (50%) of the legal expenses incurred by the farmer.**

22 **(b) The amount of the reimbursement is subject to the money**
 23 **available in the fund.**

24 **(c) In determining the amount of the reimbursement under this**
 25 **section, the commissioner shall consider the following factors:**

- 26 (1) **The amount of money available in the fund.**
- 27 (2) **The effect that the litigation has had on the farmer's**
 28 **financial position and the farmer's ability to continue in the**
 29 **farming business.**
- 30 (3) **The legal significance that the litigation may have for**
 31 **other farmers.**
- 32 (4) **Whether any of the plaintiffs have acted in bad faith in**
 33 **dealing with the farmer.**
- 34 (5) **Other factors that the commissioner considers relevant.**

35 **Sec. 3. A farmer is not entitled to reimbursement of legal**
 36 **expenses under this chapter if the commissioner determines any of**
 37 **the following:**

- 38 (1) **The farmer's breach of contract was knowing, intentional,**
 39 **and in bad faith.**
- 40 (2) **The farmer's patent infringement or violation of the**
 41 **plaintiff's other property rights:**
 - 42 (A) **was knowing and intentional; and**
 - 43 (B) **the farmer gained substantial financial or other**
 44 **benefits from the infringement or violation.**

45 **Chapter 5. Farmer Legal Defense Fund**

46 **Sec. 1. The farmer legal defense fund is established to assist the**
 47 **legal defense of farmers as provided in IC 15-9-4.**

1 **Sec. 2. The fund consists of the following:**

- 2 (1) Registration fees received under IC 15-9-2-3(3).
 3 (2) Fees received under IC 15-9-2-6.
 4 (3) Civil penalties collected under IC 15-9-7.
 5 (4) Money appropriated to the fund by the general assembly.
 6 (5) Any grants or gifts received by the commissioner for the
 7 purposes of the fund.

8 **Sec. 3. The commissioner shall administer the fund.**

9 **Sec. 4. The expenses of administering the fund shall be paid**
 10 **from money in the fund.**

11 **Sec. 5. (a) The treasurer of state shall invest the money in the**
 12 **fund not currently needed to meet the obligations of the fund in the**
 13 **same manner as other public money may be invested.**

14 (b) Interest that accrues from these investments shall be
 15 deposited in the fund.

16 **Sec. 6. Money in the fund at the end of a state fiscal year does**
 17 **not revert to the state general fund.**

18 **Sec. 7. Money in the fund is continuously appropriated for the**
 19 **purposes described in section 1 of this chapter.**

20 **Chapter 6. Indiana Farmer Friendly Designation**

21 **Sec. 1. Not later than January 31 of each year, the commission**
 22 **may designate one (1) or more registrants as an "Indiana Farmer**
 23 **Friendly Company".**

24 **Sec. 2. The commission shall designate a registrant that during**
 25 **the previous calendar year best satisfies all the following:**

- 26 (1) The registrant's business practices demonstrate respect for
 27 Indiana farmers.
 28 (2) The registrant's business practices demonstrate the
 29 registrant's concern for the well being of the businesses of
 30 Indiana farmers.
 31 (3) The registrant's business practices enhance or do not
 32 diminish Indiana farmers' competitive position in the world
 33 market place.
 34 (4) Any other criteria recommended by the commission and
 35 stated in rules adopted by the commissioner under IC 4-22-2
 36 that the commission determines demonstrates a registrant's
 37 concern for the well being of the businesses of Indiana
 38 farmers.

39 **Sec. 3. (a) A registrant designated under section 2 of this**
 40 **chapter is entitled to use the following statement through January**
 41 **31 of the year following the designation: "Designated an Indiana**
 42 **Farmer Friendly Company by the State of Indiana".**

43 (b) The commissioner may adopt rules under IC 4-22-2 to
 44 regulate the use of the designation stated in subsection (a).

45 **Sec. 4. A registrant designated under section 2 of this chapter is**
 46 **entitled to a full credit against the fees the registrant is required to**
 47 **pay under IC 15-9-2-6.**

Chapter 7. Violations and Penalties

Sec. 1. The commissioner may impose the civil penalties described in section 2 of this chapter after a hearing is conducted under IC 4-21.5.

Sec. 2. The commissioner may impose the following civil penalties under section 1 of this chapter:

(1) The commissioner may impose the following civil penalties on a person required to register under IC 15-9-2-2 who fails to register in addition to requiring payment of the fees required by IC 15-9-2-3 and IC 15-9-2-6:

(A) A civil penalty of not more than ten thousand dollars (\$10,000) as determined by the commissioner.

(B) An amount equal to ten percent (10%) of the fees the person is required to pay under IC 15-9-2-6.

(2) The commissioner may impose a civil penalty of not more than ten thousand dollars (\$10,000) for each violation of the requirements of IC 15-9-3 found by the commissioner.

(3) The commissioner may impose a civil penalty of not more than one hundred thousand dollars (\$100,000) on a person who uses the Indiana Farmer Friendly designation who:

(A) is not entitled to use the designation; or

(B) uses the designation in violation of the rules adopted under IC 15-9-6-3(b).

The commissioner may also provide that a registrant forfeits the registrant's right to use the designation.

Sec. 3. In determining the amount of a civil penalty to impose under section 2 of this chapter, the commissioner shall consider the following:

(1) Whether the person's violation was inadvertent or knowing.

(2) Whether the person gained a benefit from the violation.

(3) Whether the violation harmed an Indiana farmer.

(4) Other circumstances that the commissioner determines should be considered for the imposition of a just penalty.

Sec. 4. At the request of the commissioner, the attorney general shall file an action in a court with jurisdiction to collect a civil penalty imposed under section 2 of this chapter."

Page 3, after line 11, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE JULY 1, 2002] (a) As used in this SECTION, "commission" refers to the Indiana commission for agriculture and rural development established by IC 4-4-22-6.

(b) As used in this SECTION, "commissioner" refers to the lieutenant governor, serving as the commissioner of agriculture under IC 4-4-3-2, or the lieutenant governor's designee.

(c) The commissioner shall take appropriate action to protect the designations described in IC 15-9-6, as added by this act, under trademark law or other appropriate intellectual property law, as

1 the property of the state.

2 (d) If the commissioner determines that the state may not
3 protect the designation as property of the state, the commission
4 shall adopt a new designation that the state can protect as the
5 property of the state. If the commission adopts a new designation,
6 the following apply:

7 (1) The commissioner shall take appropriate action to protect
8 the designation adopted by the commission under trademark
9 law or other appropriate intellectual property law as the
10 property of the state.

11 (2) Notwithstanding IC 15-9-6, as added by this act, the
12 designation that shall be used under IC 15-9-6 is the
13 designation adopted by the commission and not the
14 designation described in IC 15-9-6.

15 (e) This SECTION expires July 1, 2007."

16 Renumber all SECTIONS consecutively.

(Reference is to ESB 381 as printed February 22, 2002.)

Representative Friend